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Via Hand Delivery

Ms. Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

**Re: Application by Bell Atlantic For Authorization Under Section 271 Of
the Communications Act To Provide In-Region, Interlata Services In The
State of New York (CC Docket No. 99-295)**

Dear Secretary Salas:

Enclosed please find an original and four (4) copies of the Comments of
Global NAPs Inc. in the above-referenced proceeding. If you have any questions concerning
the attached document please contact the undersigned.

Respectfully submitted,

Christopher W. Savage

cc: Attached Service List

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**Before the
Federal Communications Commission
Washington, D.C. 20554**

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OFFICE OF THE SECRETARY

In the Matter of

Application of Bell Atlantic Pursuant to
Section 271 of the Telecommunications Act of
1996 to Provide In-Region, InterLATA
Services in New York

CC Docket No. 99-295

COMMENTS OF GLOBAL NAPS, INC.

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Dated: October 19, 1999

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Summary

Bell Atlantic is abusing competing local exchange carriers (“CLECs”) that serve Internet Service Providers (“ISPs”) in New York and elsewhere. An ILEC’s failure to pay CLECs for delivering ISP-bound calls is anticompetitive, because the Commission’s “ESP Exemption” prevents LECs from receiving compensation for the function of switching inbound calls from the ISPs themselves. This means that compensation for that activity must come from the ILEC. In practical terms, the ability of CLECs to compete for the business of ISPs depends on such compensation, and failure to provide it is anticompetitive.

Bell Atlantic is abusing its competitors in this way. Its specific abuse takes the form of denying and delaying paying CLECs for delivering ISP-bound calls, despite the terms of the New York PSC’s recent order requiring such payments. Bell Atlantic’s behavior shows that it has the incentive and ability to harm its competitors by virtue of its monopoly control of the local exchange market. This shows that the public interest would not be served by granting Bell Atlantic’s application.

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

Application of Bell Atlantic Pursuant to
Section 271 of the Telecommunications Act of
1996 to Provide In-Region, InterLATA
Services in New York

CC Docket No. 99-295

COMMENTS OF GLOBAL NAPs, INC.

1. Introduction And Summary.

Global NAPs, Inc. ("Global NAPs") urges the Commission to reject Bell Atlantic's application for authority to offer in-region long distance services. Bell Atlantic's behavior with regard to competing local exchange carriers ("CLECs") offering service to Internet Service Providers ("ISPs") shows that Bell Atlantic still retains the incentive and ability to interfere with the legitimate development of local exchange competition by abusing its position as the effective monopoly provider of local exchange services. For this reason, it would not be in the public interest to grant Bell Atlantic's petition.

2. Failing To Pay For ISP-Bound Calls Is Anticompetitive.

The Commission is well aware of the controversy surrounding inter-carrier compensation for ISP-bound calls.¹ There are various legal and jurisdictional technicalities, but in practical terms, CLECs will not be able to compete effectively for the business of ISPs unless the ILEC compensates the CLEC who, in turn, switches calls to the ISPs. This result follows directly from the Commission's long-standing and sound policy of exempting ISPs from paying per-minute access charges for their connections to the public switched network.

¹ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic, Declaratory Ruling in CC Docket No. 96-98 and* (continued...)

By virtue of that exemption, ISPs may always purchase normal business end-user service from the ILEC, at flat rates that do not attempt to recover the costs of switching incoming calls to the ISP.² As an economic matter, therefore, any CLEC that tried to recover the costs of switching incoming calls to ISPs from rates charged to the ISPs themselves would promptly be without customers, because the ILEC's end-user business rates would be lower than any CLEC rate that included compensation for the switching function. The only way for a CLEC serving ISPs to be compensated for its switching activity, in other words, is through inter-carrier compensation payments from the ILEC.

In practical terms, therefore, it is obvious that an ILEC's refusal to pay a CLEC for ISP-bound calls is an anticompetitive act. Different CLECs are situated differently with respect to their ability to survive, resist, and fight back against such behavior, but the character of the behavior itself is not subject to reasonable debate.

3. Bell Atlantic's Actions Are Anticompetitive.

Bell Atlantic seeks to create the impression that it is complying with the New York PSC's order requiring compensation for ISP-bound calls.³ See Application at 34 & n. 33; Lacouture/Troy Declaration at ¶¶ 262-64.⁴ The matter is not so straightforward, however.

(...continued)

Notice of Proposed Rulemaking in CC Docket No. 99-68 (Feb. 26, 1999) ("*Declaratory Ruling*").

² The Commission has found that the charges for end user business lines are not designed to cover the costs of inbound usage. Access Charge Reform, CC Docket No. 96-262, *First Report and Order*, 12 FCC Rcd 15982 (1997) at ¶ 342, *aff'd sub nom. Southwestern Bell Tel. Co. v. FCC*, 153 F.3d 523 (8th Cir. 1998).

³ Proceeding on Motion of the Commission to Reexamine Reciprocal Compensation, *Opinion And Order Concerning Reciprocal Compensation*, Case No. 99-C-0529, Opinion No. 99-10 (August 26, 1999) ("NY PSC Order").

⁴ The specific phrasing used in both the Application and the Declaration is that Bell Atlantic "is paying reciprocal compensation consistent with" the NY PSC Order. As will be seen, Bell Atlantic has chosen those words with some care, particularly when compared to alternative language, such as "Bell Atlantic is complying with the terms of the order" or "Bell Atlantic is acting as required by the order."

First, Bell Atlantic failed to pay Global NAPs more than \$2 million in compensation due under the parties' interconnection agreement until Global NAPs filed suit against Bell Atlantic at the New York PSC. (The payment — which Bell Atlantic originally denied any obligation to make at all, notwithstanding the New York PSC's order — was actually received last week.) The fact that Bell Atlantic might have noticed at the last minute that its actual behavior towards Global NAPs did not match the statements in its Section 271 Application hardly bespeaks any sort of Bell Atlantic commitment to doing what is necessary to ensure that fair competition survives and thrives in New York.

Second, Bell Atlantic is battling with Global NAPs and other CLECs about how much per-minute compensation it should pay following the NY PSC Order. Engaging in the battle is, of course, fair enough. It is Bell Atlantic's methods that cause concern.

The New York PSC Order permits Bell Atlantic to file new interconnection tariffs with lower rates, based on the exclusion of certain costs. *See* NY PSC Order, Ordering Clause 2. But that same ordering clause plainly states that “no such [Bell Atlantic] proposal shall take effect without the approval of the Commission.” In other words, before any lower Bell Atlantic compensation rate takes effect, the New York PSC has to approve it. Despite this clear and simple directive from the New York PSC — “don't cut back on your compensation payments until we say it's okay” — Bell Atlantic is asserting both to CLECs individually and in litigation that its newly filed lower compensation rates *already govern* inter-carrier compensation for ISP-bound calls in New York, and has asserted that it will pay, if at all, at lower rates that the PSC has flatly said are not yet legally effective.⁵

⁵ Here the artfulness of Bell Atlantic's phrasing becomes apparent. It is manifestly *not* acting as required by the NY PSC's order. To the contrary, by jumping the gun on reductions in the inter-carrier compensation rate, it is depriving CLECs of revenue that the NY PSC expected the CLECs would receive until the NY PSC itself approved any new rates. But — because the newly-filed lower rates were in some sense contemplated by the NY PSC's order — Bell Atlantic can assert with a straight face that it is acting in a manner “consistent with” the order. If nothing else, the delicate, nuanced, and — not to put too fine a point on it — misleading phrasing suggests that the remainder of Bell Atlantic's assertions about its checklist compliance should be reviewed with a high degree of care.

Third, at least in Global NAPs' case, Bell Atlantic is searching for still other ways to starve its competitors of revenue. Specifically, Bell Atlantic has raised, and is threatening to raise, baseless challenges to the bills that Global NAPs sends to Bell Atlantic to try to legitimize cutting its payments by, effectively, 80% for each minute of traffic it sends to Global NAPs.⁶ Again, Bell Atlantic controls the purse strings of its competitors in this arena, so a simple, defiant refusal to pay until forced to do so in litigation cannot be viewed as a normal or acceptable business practice. Instead, it should be seen as the anticompetitive act that it is.

All of this shows that Bell Atlantic still retains the incentive and the ability to work severe financial harm on its competitors. CLECs serving ISPs are dependent on Bell Atlantic for revenue to pay for the CLECs' switching services. As noted above, the practical economic reason that the CLECs need to receive such payments from Bell Atlantic is that the Commission's access charge exemption for ISPs means that the CLECs cannot receive payment for those functions from the ISPs. And the harsh reality of the marketplace is that Bell Atlantic controls an overwhelming share of the market of end users who call ISPs, giving it a blunt economic weapon to wield against CLECs such as Global NAPs.

In this regard, Bell Atlantic's behavior in other states, such as Massachusetts, Rhode Island, and New Hampshire confirms that this monopolistic leopard has not yet changed its spots. In those states, unlike in New York, the state regulators did not promptly issue orders requiring compensation to continue for ISP-bound calls while those regulators decided what to do in response to this Commission's *Declaratory Ruling* on this topic. Consequently, Bell Atlantic simply stopped paying on its own, forcing CLECs to bring repetitive and time-consuming state regulatory complaint cases to enforce their rights to compensation, all the while being deprived of revenue for handling the function of switching calls to ISPs.

⁶ In other words, noting that its ability to cut down on the per-minute compensation rate has been constrained by the NY PSC, Bell Atlantic simply shifts its focus and attacks the number of minutes, claiming that it "really" only sends Global NAPs perhaps 20% of the minutes that Global NAPs' switch receives. Bell Atlantic made this claim when a simple review of the size of the connection between the two networks would have shown immediately that Bell Atlantic's claimed number of minutes could not be correct.

Bell Atlantic's willingness to abuse its competitors should give this Commission pause in assessing the application. First, Bell Atlantic's willingness to play fast and loose with its obligations under the NY PSC's order raises serious questions as to whether Bell Atlantic is, in fact, complying with its reciprocal compensation obligation under Section 251(b)(5). Second, whether or not Bell Atlantic's anticompetitive behavior is viewed as a strict violation of Section 251(b)(5) or not, it is plainly anticompetitive behavior, which strongly suggests that the public interest would not be served by granting Bell Atlantic's application.

4. Conclusion.

Global NAPs respectfully requests that the Commission deny Bell Atlantic's application. Bell Atlantic's behavior, shows that the public interest would not be served by permitting Bell Atlantic to offer interLATA long distance services in New York.

Respectfully submitted,

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Dated: October 19, 1999

CERTIFICATE OF SERVICE

I, Kathleen G. Maynard, hereby certify that on this 19th day of October 1999, I caused a copy of the foregoing documents in CC Docket No. 99-295 to be sent via Hand Delivery and/or Federal Express, to the following:

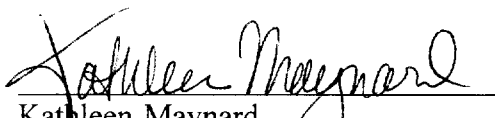
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